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Before the
Federal Communications Commission
Washington, D.C. 20554

AUG - 4 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Regulatory Treatment of LEC Provision) CC Docket No. 96-149
of Interexchange Services Originating in the)
LEC's Local Exchange Area)
)
and)
)
Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)

**PETITION FOR RECONSIDERATION OF
ANCHORAGE TELEPHONE UTILITY**

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, the Municipality of Anchorage d/b/a Anchorage Telephone Utility ("ATU")^{1/} urges the Commission to reconsider the requirement adopted in the Second Report and Order^{2/} in this proceeding that independent LECs provide in-region, interstate and international, interexchange services through a separate legal entity. This requirement is unnecessary to protect ratepayers or the public interest. Further, the Commission's Competitive Carrier Fifth Report and Order^{3/} separations requirements for LEC provision of in-region,

^{1/} ATU provides local exchange service in Anchorage, Alaska, and recently began providing interstate, interexchange service on a resale basis.

^{2/} Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, Second Report and Order, CC Docket No. 96-149, and Policy and Rules Concerning the Interstate, Interexchange Marketplace, Third Report and Order, CC Docket No. 96-91 (April 18, 1997) ("Second Report and Order").

^{3/} Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Fifth Report and Order, 98 FCC 2d 1191 (1984) ("Competitive Carrier Fifth Report and Order").

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interstate and international, interexchange services should presumptively sunset in three years. Indeed, the Commission should now adopt a streamlined procedure to exempt immediately from these requirements independent LECs facing competition in their local exchange markets.

I. Existing Cost Allocation Rules And Procedures Adequately Protect Local Exchange Ratepayers.

In its Second Report and Order, the Commission required that independent LECs providing in-region, interstate or international, interexchange services must (1) do so through a separate legal entity, (2) maintain separate books of account for their in-region, long distance affiliate, (3) not jointly own transmission or switching facilities with their long distance affiliate, and (4) provide all tariffed services to the long distance affiliate at the tariffed rates. The Commission found that these requirements, which actually are more stringent than those adopted -- years ago -- in the Competitive Carrier Fifth Report and Order,^{4/} were necessary to ensure that independent LECs would not misallocate costs between their in-region, long distance services and their local exchange and exchange access services, and would not discriminate in the provision of access services to unaffiliated long distance providers.^{5/} The Commission, however, has failed to justify the need for requiring that LECs provide in-region, long distance services through a separate legal entity. As the Commission's own analysis supports, the cost

^{4/} The Competitive Carrier Fifth Report and Order did not require a separate legal entity.

^{5/} See Second Report and Order, ¶¶ 159, 163.

allocation rules in Part 64 are the primary tool for ensuring against improper cross-subsidization and are effective to accomplish that goal.

Local exchange ratepayers will be adequately protected from improper cost allocations so long as the Commission's cost allocation and affiliate transaction rules are applicable to independent LECs' in-region, long distance services. This can be accomplished without requiring that independent LECs separately incorporate their long distance services. As explained in the Affidavit of Carl Geppert ("Geppert Affidavit") attached to the Petition for Reconsideration of USTA, the Commission's Part 64 rules and affiliate transaction rules would apply if, for accounting purposes only, independent LECs' long distance services are treated as nonregulated services. The LECs would maintain separate books of account for their in-region, long distance services, they would not own transmission or switching facilities jointly with a long distance "affiliate," and local exchange services would be provided to the long-distance service at tariffed rates. If the long distance services were treated as a nonregulated service for accounting purposes, the Commission would be able to "trace and document improper allocations of costs or assets between a LEC and its long-distance" division.^{6/} This approach would be less burdensome for independent LECs, and yet would provide the exact same protections to local exchange ratepayers.

Moreover, the approach described in the Geppert Affidavit is consistent with the Telecommunications Act of 1996 (the "1996 Telecom Act"). In adopting the 1996 Telecom Act, Congress expressly decided against imposing separate affiliate

^{6/} See Second Report and Order, ¶ 163.

requirements on independent LECs for their provision on in-region, interstate, interexchange services. See Attachment A, Letter to Chairman Hundt dated June 26, 1997. Allowing independent LECs to provide in-region, long distance services through a separate division, as opposed to requiring a separately incorporated affiliate, would thus more closely follow the intent of Congress.

II. The Competitive Carrier Requirements For Independent LECs Should Automatically Sunset In Three Years.

Under Section 272(f)(1) of the Communications Act, as amended by the 1996 Telecom Act, the provisions requiring a Bell Operating Company ("BOC") to provide in-region, interLATA services through a completely separate subsidiary -- including maintaining separate books of account and conducting all transactions on an arm's length basis -- sunset three years after the BOC affiliate is authorized to provide interLATA telecommunications services, unless the Commission specifically acts to extend the period. See 47 U.S.C. 272(f)(1). Thus, the regulatory framework established by Congress presumptively favors terminating the separations requirements for the largest LECs. Inexplicably, the Commission has adopted a regulatory framework for smaller, less powerful LECs that would impose and keep a new separate affiliate requirement. Under the Commission's regulatory framework, independent LECs will not be relieved of their separations requirements for provision of in-region, long distance services until the Commission concludes a notice of proposed rulemaking and affirmatively decides to eliminate the requirements.

The Commission has indicated that it "intend[s] to commence a proceeding" in three years to determine whether the separate affiliate and the

Competitive Carrier Fifth Report and Order requirements for independent LECs should be discontinued.^{7/} The conclusion of that proceeding could extend well beyond three years. Thus, it is quite possible under the Commission's current framework that certain BOCs could be relieved of their separate affiliate requirements long before smaller, independent LECs are relieved of those very same requirements. On reconsideration, the Commission should at the very least adopt a sunset provision that parallels the provision in Section 272(f)(1). Specifically, the Competitive Carrier Fifth Report and Order requirements, and any remaining separate affiliate requirement, imposed on independent LECs providing interexchange service should automatically sunset on April 18, 2000, (i.e., three years after the adoption of the Second Report and Order) unless the Commission affirmatively acts to extend those requirements through a notice and comment rulemaking proceeding.

III. A Streamlined Waiver Procedure Should Be Available For LECs Subject To Competition In Their Local Exchange Territory.

The Commission clearly contemplates that the separate affiliate requirement and the Competitive Carrier Fifth Report and Order requirements imposed on independent LECs' provision of in-region long distance services will not be necessary once competition exists in local exchange markets.^{8/} In the Second Report and Order, the Commission indicated that at some point in time, it plans to consider removing these requirements for all independent LECs. However, the Commission did not address removing the Competitive Carrier Fifth Report and Order requirements on an individual

^{7/} Second Report and Order, ¶ 196.

^{8/} Second Report and Order, ¶ 196.

basis for LECs facing competition in their local exchange markets. On reconsideration, the Commission should adopt a streamlined procedure for waiving these separations requirements for such LECs.

ATU's experience provides a compelling example of the need for such a streamlined waiver. ATU has entered into interconnection agreements pursuant to Section 251 of the Communications Act with both incumbent interexchange carriers -- General Communication, Inc., ("GCI") and AT&T/Alascom. Both carriers are larger than ATU. GCI, which is also the monopoly cable television provider in Anchorage, has already begun offering local exchange service to residents of Anchorage, and AT&T/Alascom should soon follow. GCI is also completing its installation of fiber optic facilities so that it may soon begin offering facilities-based local exchange service. It appears that Anchorage will be one of the first competitive local exchange markets in the country.

The Alaska Public Utilities Commission has imposed strict structural separations requirements on ATU's provision of intrastate, interexchange services. Under these restrictions, ATU must offer intrastate, interexchange services through a separate subsidiary; may not share assets or personnel with the intrastate, interexchange affiliate; and may not bundle local exchange and intrastate, interexchange service. These restrictions, however, sunset once there is competition in the Anchorage local exchange market. At that time, ATU will be able fully to integrate its intrastate, interexchange

and local exchange services. When this occurs, there is no reason why ATU should not also be able to integrate its interstate and international, interexchange services.^{9/}

Competition will develop in local exchange markets throughout the country at different rates. A waiver procedure should be available for those independent LECs operating in competitive local exchange markets to remove promptly the Commission's Competitive Carrier Fifth Report and Order separations requirements. Otherwise, these LECs will be subject to unnecessary regulations that will impede their ability to compete effectively while providing no significant protections to ratepayers. Indeed, where the markets are otherwise competitive, needless continuation of the separations requirements would operate to prevent LECs from realizing economies of scale and scope, thereby impairing competition to the detriment of customers and the public interest.

The waiver process also needs to be streamlined so that the Commission's processes do not become an unwitting drag on competition. On reconsideration, the Commission should therefore adopt a streamlined procedure in which a LEC facing competition in its local exchange market may request a waiver of the Commission's separations requirements. Under this streamlined procedure, the waiver request would automatically be granted 45 days after public notice unless the Commission found clear and convincing evidence that competition is lacking.

^{9/} Indeed, in the absence of relief from this Commission's requirements, as a practical matter ATU would not be able to integrate any of its interexchange services, thereby frustrating the Alaska commission's approach.

Conclusion

As the Commission has repeatedly stated, the purpose of the 1996 Telecom Act was "to provide for a pro-competitive, de-regulatory national policy framework" Accordingly, the Commission should not impose regulatory burdens on telecommunications carriers except to the extent necessary to protect consumers and provide for competition. Accordingly, on reconsideration the Commission should remove its requirement that independent LECs must provide interstate and international, interexchange services through a separate, legal entity. The Commission should promptly sunset its Competitive Carrier Fifth Report and Order separations requirements for an independent LEC once there is competition in the LEC's local exchange market. Finally, the Commission should sunset the Competitive Carrier Fifth Report and Order requirements for all independent LECs in three years.

Respectfully submitted,

ANCHORAGE TELEPHONE UTILITY

By 

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August 4, 1997

ATTACHMENT A

Congress of the United States
Washington, DC 20515

June 25, 1997

The Honorable Reed E. Hundt, Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Dear Chairman Hundt:

We are writing to express our concern over the apparent trend in the Commission's regulation of mid-sized, independent telephone companies ("mid-sized companies"). In a number of recent proceedings, the Commission has imposed regulations on mid-sized companies that would significantly burden and ultimately curtail the effectiveness of these companies as a pro-competitive force in the telecommunications marketplace. We strongly urge your reconsideration of these regulatory measures.

In passing the Telecommunications Act of 1996, Congress rejected a "one-size-fits-all" approach to regulating telephone companies. We recognized the need to have a flexible regulatory approach that takes into account the special needs of smaller companies vis-a-vis their larger competitors. For this reason, we established a regulatory framework addressing the separate circumstances of three broad categories of companies: small rural companies, mid-sized companies, and large local telephone companies.

We are concerned that the Commission's recent decisions fail to acknowledge the particular concerns of mid-sized companies and accordingly fail to limit appropriately the regulatory burdens placed on these companies commensurate with their size and unique circumstances as Congress intended.

For example, in recent orders the Commission has held that all incumbent local telephone companies may only offer in-region long distance through a separate affiliate. The Commission has also proposed a similar separate affiliate requirement for some mid-sized companies' provision of wireless services. These requirements place an unnecessary regulatory burden on mid-sized companies, most of whom have been offering services such as cellular telephony for years without the need for a separate affiliate. No persuasive showing has been made at the Commission to justify these regulatory burdens, and we urge their reconsideration.

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In deliberations over the 1996 Act, Congress decided against imposing a separate affiliate requirement on the mid-sized companies for their provision of long distance and wireless services. We decided to impose a separate affiliate requirement on the largest local telephone companies only after extensive debate and only on the condition that the separate affiliate requirement would sunset three years after any such company is authorized to provide interLATA services unless the Commission extends the period by its own action. The Commission's decision to impose the separate affiliate requirement on mid-size companies' provision of in-region long distance services does not sunset until further Commission action. This decision by the Commission ignores the rejection by the Congress of the proposal to require separate affiliates for mid-sized companies and actually imposes more severe separate affiliate requirements on them, due to absence of a sunset, than the Commission has imposed on the largest local telephone companies, with respect to which the Congress did decide to require separate affiliates for a limited time. This result clearly requires reexamination.

In addition, the Commission has decided that large long distance companies are not required to establish separate affiliates for their joint offerings of local and long distance telephony. Smaller, independent telephone companies should not be subject to heavier regulatory burdens than are these companies.

Another example where the Commission has failed to address the special circumstances of mid-sized companies is in its access reform initiative. In that proceeding, the Commission decided to change the rules governing companies subject to price caps in order to reduce access charges, leaving the decision on the appropriate regulation of companies subject to rate of return rules to a later proceeding. While this strategy was no doubt an effort to deal with the largest companies first, several mid-sized companies were caught up in the rule change because they are subject to price caps. The Commission's decision did not address the vastly different effect access reform will have on the mid-sized companies subject to price caps as compared to the larger price capped companies, even though the Commission's initial price cap decision recognized the difference between large and mid-sized companies by allowing the smaller companies to choose voluntarily price cap regulation in the first place.

Mr. Chairman, these and other examples suggest a pattern of inattention at the Commission to the differing needs of smaller, mid-sized companies and their unique potential to provide much of the competition Congress envisioned in passing the Telecommunications Act of 1996. We, therefore, strongly urge you to reconsider your decisions and in doing so assess the effect of proposed regulations on mid-sized

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companies as Congress intended. At a minimum, the Commission should be moving toward lessening regulation of these entities, rather than imposing costly and burdensome new regulations.

Thanking you for your attention to these comments, we are

Sincerely,

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Ralph M. Hall

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